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DEVLETA D. SOKOL Tenant/Petitioner v. 636 COOPERATIVE ASSOCIATION, INC. Housing Provider/ Respondent	Case No.: 2010-DHCD-TP 29,990 Agency No.: TP 29,990 *In re*: 636 12th Street, NE #202

FINAL ORDER

Tenant/Petitioner Devleta Sokol ("Tenant")[1] filed a tenant petition asserting violations of the Rental Housing Act of 1985 (the "Rental Housing Act" or the "Act"). Housing Provider moved to dismiss the tenant petition on the grounds that Ms. Sokol was a member of a cooperative association, not subject to the Rental Housing Act, and that Ms. Sokol's claims were barred on grounds of *res judicata* as a result of a judgment entered in the Superior Court of the District of Columbia Landlord and Tenant Branch. For reasons I discuss below, I grant Housing Provider's motion to dismiss and dismiss the tenant petition with prejudice.

I. INTRODUCTION

On November 3, 2010**,** Ms. Sokol filed Tenant/Petition ("TP") 29,990 with the Rent Administrator in the Rental Accommodations Division ("RAD") of the Department of Housing

[1] I refer to Ms. Sokol at "Tenant" because she filed a tenant petition under the Rental Housing Act, which designates the petitioner as the Tenant. I conclude below that Ms. Sokol was not legally a tenant under the Act.

and Community Development ("DHCD"). The petition alleged the following violations of the Rental Housing Act at the Housing Accommodation, 636 12th Street NE, by Housing Provider 636 Cooperative Association, Inc. — that: (1) the Housing Accommodation was not properly registered. (2**)** Tenant's rent was increased when the Rental Unit was not in substantial compliance with the District of Columbia Housing Regulations. (3**)** Services and/or facilities provided as part of the tenancy had been substantially reduced or permanently eliminated. (4**)** Housing Provider took retaliatory action against Tenant in violation of the Act because Tenant exercised Tenant's rights under the Act.

After the parties failed to reach a resolution of the dispute in mediation, this administrative court issued a Case Management Order on February 18, 2011, scheduling a prehearing telephone conference on March 14, 2011, and a hearing on March 24, 2011. At the telephone conference, on March 14, Housing Provider's attorney stated that he planned to file a motion to dismiss the tenant petition. Accordingly, I issued a Scheduling Order on March 16, 2011, setting dates for Housing Provider to file the motion to dismiss and for Ms. Sokol to respond. The hearing on the full tenant petition was canceled and the parties were directed to appear for a hearing on Housing Provider's motion to dismiss on April 26, 2011, at 9:30 a.m. I informed Ms. Sokol of this schedule at the prehearing telephone conference, with the aid of a Croatian interpreter, and issued a Scheduling Order on March 16, 2011, confirming the hearing date and time.

On April 1, 2011, Ms. Sokol submitted a letter acknowledging the April 26, 2011, hearing date and asking for help to find a lawyer to represent her. At my direction, a legal

assistant telephoned Ms. Sokol to give her the names of legal services organizations that might be able to assist her.

Housing Provider filed its motion to dismiss on April 11, 2011, more than two weeks after the March 25, 2011, deadline for submission set in the Scheduling Order. Housing Provider also filed a motion to accept a late filing of the motion on account of illness of counsel. Ms. Sokol did not respond to the motion to dismiss or the motion to accept late filing.

Housing Provider's attorney, Jonathan R. Schuman, appeared at the scheduled argument on the motion together with Property Manager LaShon Hill. After observing that Ms. Sokol had received proper notice, I permitted Housing Provider to proceed with the argument and for Ms. Hill to testify in support of the motion to dismiss.

Ms. Sokol has had no communication with this administrative court since her letter of April 1, 2011, and her telephone call with an OAH legal assistant.

II. FINDINGS OF FACT

Housing Provider 636 Cooperative Association, Inc., is a cooperative corporation that owns the Housing Accommodation at 636 12th Street NE. The building contains apartments that are occupied by members who elect directors and enter into an Occupancy Agreement with the cooperative. Ex. A to Mot. To Dismiss. The Occupancy Agreement requires members to pay an initial subscription amount and then to pay monthly carrying charges set by the board of directors. *Id.* at 2. Failure to pay carrying charges is a default that allows the board of directors to expel a member and evict the member from his or her apartment. *Id.* at 8.

In October 2010, Housing Provider filed a complaint for possession in the Landlord and Tenant Branch seeking to repossess Ms. Sokol's apartment because she had failed to pay rent since May 2010.[2] Ex. B to Mot. To Dismiss. Following a trial on January 4, 2011, the Superior Court judge entered a $3,905 judgment against Ms. Sokol. Tr. 46.[3]

III. CONCLUSIONS OF LAW

A. Ms. Sokol Received Proper Notice of the Hearing.

Ms. Sokol was informed orally of the hearing date and time at the prehearing telephone conference on March 14, 2011. The Scheduling Order setting the hearing date was mailed to Ms. Sokol at the address given in tenant petition. In addition, Ms. Sokol acknowledged the hearing date in her letter to OAH filed April 1, 2011. It is clear that Ms. Sokol received proper notice of the hearing on Housing Provider's motion to dismiss. *Jones v. Flowers*, 547 U.S. 220 (2006) (notice by mail is sufficient if not returned as undeliverable); *Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002) (service of notice to prisoner by mail complied with due process even though the prisoner never received the notice); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983) (service by mail complies with due process); *McCaskill v. D.C. Dep't of Emp't Servs.* 572 A.2d 443, 445 (D.C. 1990) (notice mailed to address supplied by the party was "reasonably calculated" to afford an opportunity to be heard); *Carroll v. D.C. Dep't of Emp't Servs.*, 487 A.2d 622, 624 (D.C. 1985) (notice mailed to address provided by the party and not

[2] The defendant named in the Landlord and Tenant Branch action was Devleta Kujundzic. I credit Ms. Hill's testimony that the Tenant here, Devleta Sokol, and the defendant in the Superior Court action, Devleta Kujundzic, are the same person.

[3] Refers to the Transcript of Hearing, *636 Coop. Ass'n, Inc. v. Kujundzic*, No. 2010 Landlord and Tenant Branch 27098 (D.C. Sup. Ct. Jan. 4, 2011), attached as Ex, C to Housing Provider's Mot. To. Dismiss.

returned as undeliverable was adequate, even though not received). Proceeding in Ms. Sokol's absence was authorized under OAH Rule 2818.3, which provides that an Administrative Law Judge may decide the case on the merits when a party fails to appear at a hearing.

B. As a Cooperative Member, Ms. Sokol Cannot Bring Claims Under the Rental Housing Act.

Ms. Sokol was not a traditional tenant who entered into a lease with a building owner. She was a member of a cooperative association whose rights were subject to an occupancy agreement. Ex. A to Mot. To Dismiss. As a member, she also had an ownership interest in the cooperative.

The Rental Housing Regulations specifically provide that: "Cooperative units occupied by cooperative members shall be exempt from the rent stabilization program of the Act." The District of Columbia Court of Appeals (Court of Appeals) has held, more broadly, that the entire Rental Housing Act is "inapplicable" to cooperative units. *Snowden v. Benning Heights Coop., Inc.*, 357 A.2d 151, 156 (D.C. 1989). The Court of Appeals' rationale is that: "A member's cooperative apartment is not 'rented or offered for rent' by the cooperative to the member." *Id.*

The Court of Appeals' holding in *Snowden* controls here. Housing Provider is a cooperative association. Ms. Sokol was a member. It follows that Ms. Sokol may not seek relief under the Rental Housing Act. The jurisdiction of this administrative court is limited to matters arising under the Rental Housing Act. Therefore, OAH does not have jurisdiction to decide this matter.

C. Ms. Sokol's Claims Here Are Barred on Account of *Res Judicata*.

The doctrine of *res judicata* "precludes relitigation of the same claim between the same parties." *Elwell v. Elwell*, 947 A.2d 1136, 1139 (D.C. 2008). *Res judicata*, provides that "a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties or their privies." *Patton v. Klein*, 746 A.2d 866, 870 (D.C. 1999) (citations omitted). Further, *res judicata* bars subsequent claims arising out of the first cause of action that could have been raised there. *Id*. at 870. The Court of Appeals described the operation of the doctrine in *Henderson v. Snider Bros., Inc.*, 439 A.2d 481, 484-485 (D.C. 1981):

> When the parties are the same, and the essence of the claim and the evidence necessary to establish it are the same, *res judicata* applies. [Citations omitted.]
>
> The doctrine of *res judicata* (direct estoppel) requires that a valid, final judgment when rendered on the merits be considered an absolute bar to a subsequent action based on the same claim or demand between the same parties. . . . Under the doctrine of *res judicata* '. . . a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented . . . .' (*Quoting Cromwell v. County of Sac*, 94 U.S. 351, 383 (1878)).

After Ms. Sokol filed this tenant petition on October 28, 2010, Housing Provider commenced an action in the Superior Court's Landlord and Tenant Branch to recover unpaid rent. That action resulted in a $3,905 judgment against Ms. Sokol at a trial on January 4, 2011. Tr. 45.

The Superior Court of the District of Columbia and OAH have concurrent jurisdiction over claims alleging reduction in services and facilities and claims for retaliation. *Interstate Gen. Corp. v D.C. Rental Hous. Comm'n*, 441 A.2d 252, 254 (D.C. 1982); *Bedell v. Clark*, 2003 D.C. Rental Hous. Comm'n LEXIS 693, TP 29,979 (RHC Apr. 29, 2003) at 7 (*citing Robinson v.*

Edwin B. Feldman Co., 514 A.2d 799 (D.C. 1986)); *DeSzunyogh v. William C. Smith & Co.*, 604 A.2d 1, 4 (D.C. 1992). Because Ms. Sokol's claims concerning substantial housing code violations, services and facilities reductions, and retaliation could have been brought as defenses in the Landlord and Tenant Branch action, they are barred here. *See Russell v. Smithy Braedon Prop. Co.*, 1995 D.C. Rental Hous. Comm'n LEXIS 116, TP 22,361 (RHC July 20, 1995) (barring relitigation of identical claims between the same parties or those in privity with them, after settlement or final judgment); *Brewster v. Suitland Parkway Overlook Tenant Ass'n*, 1993 D.C. Rental Hous. Comm'n LEXIS 201, TP 22,265 (RHC Oct. 22, 1993) (barring tenant from bringing second tenant petition involving the same parties as the earlier tenant petition, alleging identical violations involving same period and where tenant entered into settlement that resulted in the dismissal of the earlier petition).

The sole claim alleged in the tenant petition over which the Landlord and Tenant Branch did not have concurrent jurisdiction is the claim that the Housing Accommodation was not properly registered. Because the Housing Accommodation here is a cooperative, exempt from the provisions of the Rental Housing Act, Housing Provider was not required to register it. Moreover, because Ms. Sokol failed to appear at the hearing to present evidence, she failed to sustain her burden of proof on this issue.

All of Ms. Sokol's claims are barred as a matter of law. Therefore, the tenant petition is dismissed.

IV. ORDER

It is this **12th** day of **June 2012,**

ORDERED, that Housing Provider's Motion for OAH To Accept Late Filing of Motion To Dismiss is **GRANTED**; and it is further

ORDERED, that Housing Provider's Motion To Dismiss Tenant Petition is **GRANTED**; and it is further

ORDERED, that Case No. 2010-DHCD-TP 29,990, TP 29,990, is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

/s/ `
Nicholas H. Cobbs
Administrative Law Judge